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No. 00-1903

In The

Supreme Court of the United States

ROGER AND VIRGINIA GALLAND,

Petitioners,

v.

CITY OF CLOVIS, CLOVIS CITY COUNCIL, and CLOVIS MOBILE HOME RENT COMMISSION,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of California

BRIEF, *AMICUS CURIAE*, OF AMERICAN ASSOCIATION OF SMALL PROPERTY OWNERS, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

SHOULD THE STATE COURT OF CALIFORNIA BE PERMITTED TO STAND BETWEEN A SMALL PROPERTY OWNER AND A 42 U.S.C. SEC. 1983 ACTION?

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BRIEF, *AMICUS CURIAE*, OF AMERICAN ASSOCIATION OF SMALL PROPERTY OWNERS, IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Supreme Court Rule 37.2, counsel for *amicus curiae*, having secured the consent from counsel for Petitioners and Respondents, submits this brief in support of the Petition for Writ of Certiorari.

IDENTITY AND INTEREST OF *AMICUS CURIAE*[1]

The American Association of Small Property Owners (AASPO) is a nonpartisan, nonprofit 501(c)(3) corporation. Since 1993, AASPO has been working for the right of small property owners to prosper freely and fairly – to make possible the American dream of building wealth through real estate. Based in Washington, DC, and with experts and advisors strategically located throughout the nation from California to New England, AASPO is the only national organization for small landlords, property owners and real estate investors to share information and strategies on important issues of the day.

Nationwide, there are some 10 million small owners of residential and commercial investment properties, accounting for more than $40 billion per year in direct economic activity. We are served by nearly 2,000 state and local associations around the country. AASPO's print

[1] Pursuant to Supreme Court Rule 37.6, counsel for *amicus* states that neither counsel for Petitioner nor Respondent authored this brief in whole or in part and no person or entity other than *amicus* made a monetary contribution to the preparation or submission of the brief.

newsletter, The Small Property Owner, was voted the "Best Independent Real Estate Newsletter for 1996" by the National Association of Real Estate Editors. Our web site is at www.aaspo.org.

Our goal is to restore common sense and equity to federal, state and local regulations, tax liability and other laws that unjustly punish small property owners.

Our mission is to create public understanding and to build a network for small property owners whose exchange of experience and knowledge will help produce more informed and realistic public policies, from town halls to city hall, and from state houses to the White House and Capitol Hill.

America is at a crossroads.

We can promote property ownership and we can support small investors who provide housing for Americans. Or, we can destroy small business people with rent control, draconian regulatory practices, oppressive taxation and the ever-present threat of precious resources being consumed by litigation.

All too often, as is the situation in the instant case, the only shield standing between small property owners and overly aggressive and abusive governments is the United States Constitution, and a Judiciary willing to recognize and enforce our fundamental rights.

THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED BECAUSE THE RIGHTS OF PROPERTY OWNERS TO CONSTITUTIONALLY GUARANTEED DUE PROCESS SHOULD NOT BE EVISCERATED BY THE STATE COURT OF CALIFORNIA.

If the Galland case is allowed to stand, property owners in California will have no real protection against abusive or corrupt state adjudicative procedures. This decision will also set a dangerous precedent in other states where property owners could face similar, although less intense, intimidation by local governments.[2]

STATEMENT OF THE CASE

The Gallands had obtained an approximately one million dollar judgment under 42 U.S.C. Sec. 1983 (the Civil Rights Act) against the City of Clovis for violation of the Gallands' substantive and procedural due process rights in its implementation of its Mobile Home Rent Review Ordinance. The Gallands own a mobile home park in Clovis. Between 1988 and 1992 the City of Clovis

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[2] We have seen the use of rental inspections of investment properties by local governments, correlating directly to the disfavorability factor of the particular property owner. In Davenport, IA, for example, Dan Lubell led the fight to stop the desecration of the American flag and restore a small business owner's flagpole after it was bulldozed down under order of the city attorney because the pole encroached one foot on city property. The new mayor reinstalled the flagpole but the career city attorney has since tried to reclassify Dan's contract sales as rentals so the city could inspect and reinspect virtually all of Dan's investment properties. No violations are suspected but the pattern continues.

subjected them to virtually unending rent control proceedings regarding the modest rent increases that the Gallands noticed each year. (In 1988 the rent increase at issue was $6.00, and the proceedings cost over $100,000.)

The trial court found that the City had knowingly perpetuated proceedings that held only an illusory benefit for the Gallands, since the proceedings continuously cost more than the increase at issue. The California Fifth Appellate District Court upheld the trial court's decision in June, 2000.

However, on February 5, 2001 the California Supreme Court reversed the decision and remanded the matter back to the trial court and city counsel for further proceedings.[3] Thus, after 12 years, the Gallands were set back to square one. (Or actually farther back than square one.)

SUMMARY OF ARGUMENT

We feel it is time for the U.S. Supreme Court to rectify California's maverick jurisprudence that conditions the availability of relief in land use cases to an exhaustion of state law procedures, and return California to an established constitutional regime.

[3] *Galland v. City of Clovis*, 24 Cal.4th 1003, 103 Cal.Rptr.2d 711 (2001).

ARGUMENT

"Property management under rent regulation is not an administrative skill. It is a martial art." Adrian Tiemann, New York City[4]

But even by New York standards, the abuse of the Gallands is almost incomprehensible. The City of Clovis had no written rules or guidelines. The Gallands were faced with administrative proceedings that generated continuing demands for whatever additional information various city officials thought they needed, but which served no useful purpose. The City compounded its demands for information with unreasonable time schedules. The California Supreme Court characterized the City's administrative process as "shifting," "costly," "inefficient," "ad hoc," "ill-considered," and "bureaucratic bungling." (App., pp. 49, 50.) But the same Court saw a "remedy" in returning the Gallands to this star chamber.

On page 8, the petition lays out the steps that property owners must go through *before* they can file a lawsuit under 42 U.S.C. Sec. 1983:

> The new California "remedy" requires property owners to jump through the following six (and likely more) hoops *before* they can invoke their

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[4] Dr. Adrian Tiemann is the president and one of the founders of Property Owning Women ("POWs, still prisoners of World War II"), a nonprofit association of small rental building owners in New York City, whose mission is in part to educate the public about the role that small property owners play in the maintenance of New York City's diversity, economic health, and quality of life.

> federal Section 1983 remedy. (1) Seek approval of a rent increase from the Rent Control Commission. If dissatisfied, (2) appeal that to the city council. If still dissatisfied, (3) seek a writ of administrative mandate from the superior court to review the city council's decision. If such a review determined that the denial of a rent increase was confiscatory, then (4) return to the Rent Control Commission to seek a "*Kavanau* adjustment." If still turned down, then (5) appeal again to the city council. If still dissatisfied, then (6) seek a writ of administrative mandate from the superior court to determine whether the result (even with a *Kavanau* adjustment) is still confiscatory. Only after successful conclusion of this administrative and judicial "remedial" gauntlet, would the property owners be permitted for the first time to (7) pursue, in a third lawsuit, a damages remedy under Section 1983 – unless, by that time, they had exhausted not only these state preconditions to suit, but themselves and their bank accounts, as well.

The petition then states that "(t)wo Justices dissented on the ground that it was both unfair and unseemly to return the Gallands to the tender mercies of those who had willfully violated their constitutional rights, and that it also defied clear holdings of this Court" in the *Patsy* and *Felder* cases.[5]

AASPO couldn't agree more. From the standpoint of small property owners in this country, the significance of

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[5] *Patsy v. Board of Regents*, 457 U.S. 496 (1982), and *Felder v. Casey*, 487 U.S. 131 (1988).

the Galland decision is the excessive and needless additional costs imposed on the property owner by the California Court, the unmitigated violation of due process, and the unlawful subordination of federal constitutional rights to state law procedures.

Sec. 1983 was designed to provide a unique federal remedy that is "judicially enforceable in the first instance." (*Felder*, 487 U.S. at 148.) It may not be conditioned on an exhaustion of state law remedies.

The California Supreme Court erroneously held that the Gallands could not as a matter of law pursue their federal Sec. 1983 rights until they had exhausted all state administrative proceedings.

Clearly the prospect of any meaningful relief becomes absurdly attenuated in the face of the procedures sanctioned by the Supreme Court of California. If a state can interpose these kinds of requirements between a small property owner and a 42 U.S.C. Sec. 1983 action, then a small property owner has no real protection under the United States Constitution.

CONCLUSION

AASPO believes that this Court needs to assert its rightful and proper role as the protector of the ordinary citizen to assure that state-sanctioned violations of federal constitutional rights are curtailed and that aggrieved parties are speedily and fully compensated. Abusive or corrupt state adjudicative procedures like those the Gallands endured have no place in American jurisprudence

and make a mockery of our democratic form of government and our right to life, liberty and property as guaranteed by the United States Constitution.

Respectfully submitted,

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American Association of
Small Property Owners

DATE: July 19, 2001